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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Hugh Casiano,

10 Plaintiff,

11 v.

12 Predator Motorsports Incorporated,

13 Defendant.
14

No. CV-23-01145-PHX-DLR

ORDER

15
16 Plaintiff Hugh Casiano filed this action in Maricopa County Superior Court in May
17 2023 alleging breach of contract and warranty claims arising out of a vehicle engine
18 conversion. (Doc. 1-5.) Defendant Predator Motorsports, Inc. (“Predator”) removed the
19 case to this Court in June 2023. (Doc. 1.) Predator then moved to dismiss the claims under
20 Federal Rule of Civil Procedure 12(b)(2). (Doc. 4.) Casiano objected to the motion and
21 requested leave to conduct jurisdictional discovery. (Doc. 13.) The motion is fully briefed
22 and no party requested oral argument. For the following reasons, the Court finds that it
23 lacks personal jurisdiction over Predator, denies Casiano’s request for jurisdictional
24 discovery, and dismisses this case without prejudice.

25 **I. Background**

26 Casiano, an Arizona resident, entered into a service agreement in late 2020 or early
27 2021 with Predator, a California corporation, for a “H1 Duramax Conversion” on
28 Casiano’s 1997 Hummer H1 (the “Agreement”). (Doc. 1-5 ¶¶ 9-12.) The H1 Duramax

1 Conversion is a process by which the Hummer's existing engine is replaced by a Duramax
2 diesel engine for the purpose of increasing the vehicle's power and fuel efficiency. (¶ 11.)

3 Predator operates a generally accessible website where it advertises itself as "the #1
4 progressive leader in high-quality products, innovation, and services for H1 . . . Hummers."
5 (¶ 7.) Amongst other offerings, Predator advertises the H1 Duramax Conversion on its
6 website. (¶ 11.) Predator also maintains a "Contact Us" form on its website where
7 individuals interested in its services and products can initiate communications with
8 representatives of the company. (Doc. 13 at 16.)

9 Casiano had conducted business with Predator before, ordering parts that Predator
10 shipped to his Arizona residence in late 2015 or early 2016. (*Id.* at 15.) After that purchase,
11 Casiano started receiving a number of newsletter emails from Predator, totaling ten emails
12 between March 21, 2016 and July 3, 2019. (*Id.* at 22-47.) These emails, created and
13 distributed exclusively by a third-party, Epik Productions, promote Predator's offerings
14 through parts and services advertisements. (*Id.* at 16.)

15 On November 26, 2020, Casiano completed the "Contact Us" form on Predator's
16 website and inquired into a H1 Duramax Conversion. (Doc. 4-1.) In this initial outreach,
17 Casiano requested whether shipping to and from California, where all of the work was
18 understood to take place, was available. (Doc. 4-1.) After that, Casiano and Predator began
19 discussions and communicated over email and telephone to negotiate the terms of the
20 Agreement. (Doc. 13 at 16.) Predator agreed to assist with transporting the vehicle when
21 Casiano informed Predator that he was unable to start the car after it had been broken into.
22 (*Id.* at 16-17)

23 Following completion of the H1 Duramax Conversion, Predator sent Casiano's
24 Hummer back to Arizona where Casiano received it. (*Id.* at 18.) Casiano noticed that the
25 Hummer was inoperable to the point of being un-drivable, so he brought the vehicle to an
26 Arizona-based repair shop to diagnose the issue. (*Id.*) The repair shop informed Casiano
27 that his Hummer would require extensive repair work to restore its functionality, and
28 Casiano relayed that information to Predator. (*Id.*) Predator initially attempted to assist in

1 diagnosing the issue through text message, but then told Casiano that it would perform
2 additional work only if Casiano shipped the vehicle back to California at his own expense.
3 (*Id.* at 18, 49-51.)

4 Casiano filed this lawsuit alleging Predator breached the Agreement and certain
5 associated warranties. (Doc. 1-5.) Predator has moved to dismiss the claims against it for
6 lack of personal jurisdiction. (Doc. 4.)

7 **II. Legal Standard**

8 “Where a defendant moves to dismiss a complaint for lack of personal jurisdiction,
9 the plaintiff bears the burden of demonstrating that jurisdiction is appropriate.”
10 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). To do so,
11 the plaintiff must show both that the forum state’s long-arm statute confers jurisdiction
12 over the non-resident defendant and that the exercise of jurisdiction comports with due
13 process. *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269 (9th Cir. 1995).

14 Where, as here, the state’s long-arm statute confers jurisdiction co-extensive with
15 the limits of the due process clause, the two inquiries merge and the court need consider
16 only whether the exercise of jurisdiction comports with due process. *Id.*; *Doe v. Am. Nat’l.*
17 *Red Cross*, 112 F.3d 1048, 1050 (9th Cir. 1997); Ariz. R. Civ. P. 4.2(a). The exercise of
18 jurisdiction comports with due process when the non-resident defendant has “certain
19 minimum contacts with [the forum] such that the maintenance of the suit does not offend
20 traditional notions of fair play and substantial justice.” *Int’l Shoe v. Washington*, 326 U.S.
21 310, 316 (1945) (internal quotation and citation omitted).

22 If the non-resident defendant’s “motion is based on written materials rather than an
23 evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional
24 facts.” *Schwarzenegger*, 374 F.3d at 800 (internal quotation and citation omitted). At this
25 stage, the court “may not assume the truth of allegations in a pleading which are
26 contradicted by affidavit.” *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284
27 (9th Cir. 1977). Uncontroverted allegations in the complaint, however, “must be taken as
28 true, and conflicts between the facts contained in the parties’ affidavits must be resolved in

1 [the plaintiff's] favor for purposes of deciding whether a prima facie case for personal
 2 jurisdiction exists." *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586,
 3 588-89 (9th Cir. 1996) (internal quotation and citation omitted).

4 **III. Discussion**

5 The Court's exercise of personal jurisdiction may take two forms: general
 6 jurisdiction and specific jurisdiction. *Davis v. Cranfield Aerospace Sols., Ltd.*, 71 F.4th
 7 1154, 1161 (9th Cir. 2023). General jurisdiction requires the defendant to "engage in
 8 continuous and systematic general business contacts" in the forum state. *Schwarzenegger*,
 9 374 F.3d at 801 (internal quotation and citation omitted). "This is an exacting standard, as
 10 it should be, because a finding of general jurisdiction permits a defendant to be haled into
 11 court in the forum state to answer for any of its activities anywhere in the world." *Id.*
 12 Casiano concedes that this Court lacks general jurisdiction over Predator and argues solely
 13 for specific jurisdiction.

14 Specific jurisdiction is more limited and only appropriate when "the specific cause
 15 of action arises out of a defendant's more limited contacts with the state." *Roth v. Garcia*
 16 *Marquez*, 942 F.2d 617, 620 (9th Cir. 1991). This Court uses the three-prong "minimum
 17 contacts" test to determine whether specific personal jurisdiction exists:

18 (1) The non-resident defendant must purposefully direct his
 19 activities or consummate some transaction with the forum or
 20 resident thereof; or perform some act by which he purposefully
 21 avails himself of the privilege of conducting activities in the
 22 forum, thereby invoking the benefits and protections of its
 23 laws;

24 (2) the claim must be one which arises out of or relates to the
 25 defendant's forum-related activities; and

26 (3) the exercise of jurisdiction must comport with fair play and
 27 substantial justice, i.e. it must be reasonable.

28 *Schwarzenegger*, 374 F.3d at 802. The plaintiff bears the burden on the first two
 prongs, and a failure to satisfy either is fatal. *Id.* But "[i]f the plaintiff succeeds in satisfying
 both of the first two prongs, the burden then shifts to the defendant to present a compelling
 case that the exercise of jurisdiction would not be reasonable." *Id.* (internal quotation and

1 citation omitted). Specific personal jurisdiction over Predator is lacking because Casiano
2 has not satisfied the first prong.

3 Both parties submitted a declaration and exhibits with their briefs. (Doc. 13; Doc.
4 14-1.) According to Casiano's declaration, in late 2015 or early 2016 he purchased parts
5 from Predator which Predator shipped to his home address in Arizona.¹ (Doc. 13 at 15.) He
6 then began receiving targeted email communications from Predator over a period of several
7 years and ultimately sought a consultation for a H1 Duramax Conversion. (*Id.* at 16.)
8 Casiano and Predator engaged in a series of phone call and email exchanges in furtherance
9 of this transaction, including exchanges related to the transport of Casiano's Hummer to
10 and from California. (*Id.*) Predator was aware that Casiano resided in Arizona based on
11 these interactions. (*Id.*)

12 Predator submitted a declaration of its own by Ryan Wilson, Predator's CEO. (Doc.
13 14-1.) Wilson stated that Predator has no employees in Arizona, does not market its
14 business in Arizona, and does not solicit business from Arizona residents. (*Id.* at 1-2.)
15 Further, Predator outsources its email distribution to Epik Productions. (*Id.* at 2.) Epik
16 Productions is solely responsible for the creation and content of its email distributions,
17 maintains no location, physical address, or other geographical information about the email
18 recipients, and only sends email solicitations to individuals who have opted in to receive
19 the emails. (*Id.*)

20 Casiano's argument in support of specific jurisdiction is flawed for at least three
21 reasons. First, Casiano does not allege any actions by Predator that initiated contacts with
22 Arizona. *See Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 ("[T]he
23 relationship between the nonresident defendant, the forum, and the litigation must arise out
24 of contacts that the defendant *himself* creates with the forum State.") (internal quotation
25 and citation omitted). Predator's use of a generally accessible website does not constitute

26 ¹ Casiano argues that Predator availed itself of Arizona by shipping products into
27 the forum state in 2015/2016. (Doc. 13 at 7.) The Court disagrees. Though shipping a
28 single, physical product into the forum state via an interactive website *could* satisfy the
first prong of the "minimum contacts" test, *see Herbal Brands, Inc. v. Photoplaza, Inc.*, 72
F.4th 1085, 1094 (9th Cir. 2023), the 2015/2016 purchase here is too attenuated from the
Agreement at issue to satisfy the second prong of the "minimum contacts" analysis.

1 purposeful availment of Arizona and Casiano points to no specific website features seeking
2 a commercial presence in the state. *See Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419
3 (9th Cir. 1997). Predator’s website, “while interactive, [is] informational in nature and
4 function[s] more like broad national advertising campaigns,” which is insufficient to find
5 personal jurisdiction in Arizona. *Helperich Patent Licensing, LLC v. Suns Legacy Partners,*
6 *LLC*, Nos. CV-11-2304-PHX-NVW, 2013 WL 442296, at *2 (D. Ariz. Feb. 5, 2013).
7 Additionally, the consummation of a contract stemming from phone calls and email
8 communications with a forum resident is insufficient to create personal jurisdiction. *Gray*
9 *& Co. v. Firstenberg Machinery Co., Inc.*, 913 F.2d 758, 761 (9th Cir. 1990). This principle
10 remains valid even if it was foreseeable that injury may occur in the forum. *Id.*

11 Second, Casiano’s argument that Predator’s targeted email campaign demonstrates
12 purposeful availment falls short. Casiano alleged only that he began receiving targeted
13 email communications after his late 2015/early 2016 parts purchase; he offered no
14 controverting evidence that he did not request these emails by opting in. *See Axiom Foods*,
15 874 F.3d at 1068 (“[T]he minimum contacts analysis examines the defendant’s contacts
16 with the forum State itself, not the defendant’s contacts with persons who reside there.”)
17 (internal quotation and citation omitted). The burden is Casiano’s to overcome on this
18 point, but Casiano’s own exhibits reveal that he received the emails because he signed up
19 for an account and opted in via Predator’s website. (Doc. 13 at 23-47.) Even if Predator
20 initiated the email campaign, it still would fall short under a theory of individualized
21 targeting because individualized targeting “will not, on its own, support the exercise of
22 specific jurisdiction.” *Axiom Foods*, 874 F.3d at 1071. In alleging a targeted email
23 campaign, Casiano did not identify the “something more” that is required to transform a
24 passive internet presence into contacts with a forum state sufficient to confer personal
25 jurisdiction. *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1020-21 (9th Cir. 2002).

26 Moreover, as it relates to the email campaign, Epik Productions’ actions cannot be
27 imputed to Predator under an agency theory. In the Wilson declaration, Predator disclaimed
28 all control over the creation of the emails, the content of the emails, and the distribution of

1 the emails. (Doc. 14-1 ¶¶ 7-14.) Where, as here, the contracted publisher controls all
 2 fundamental decision-making over the emails, the actions of the third-party publisher
 3 cannot be imputed to the defendant. *See Durward v. One Techs. LLC*, No. CV 19-6371-
 4 GW-AGRx, 2019 WL 4930229, at *5 (C.D. Cal. Oct. 3, 2019).

5 Third, the Agreement does not create any ongoing obligations for Predator in
 6 Arizona. *Boschetto v. Hansing*, 539 F.3d 1011, 1017 (9th Cir. 2008). The Agreement
 7 contemplated services for a H1 Duramax Conversion. (Doc. 13 at 16.) The Agreement
 8 additionally included, at Casiano’s request, transportation to and from California. (Doc. 4-
 9 1.) However, once Predator shipped the Hummer back to Arizona, its contractual
 10 obligations ended. Because the Agreement did not “create[] or contemplate[] continuing
 11 relationships and obligations between the defendant and the forum,” the Agreement itself
 12 does not constitute purposeful availment. *Henrietta Mine LLC v. A.M. King Indus. Inc.*,
 13 No. CV-20-01106-PHX-SMB, 2021 WL 1561505, at *3 (D. Ariz. Apr. 21, 2021).

14 Although the inquiry could end here, Predator’s alleged contacts with Arizona also
 15 fail the second prong. The second prong asks if each claim “arises out of or relates to
 16 [Predator’s] forum-related activities.” *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th
 17 Cir. 2017). Both parties contend that the Court should utilize a “but for” test to analyze this
 18 prong.² (Doc. 13 at 9-10; Doc. 14 at 9-10.) In other words, the Court asks whether the
 19 claims at issue in the case would not have arisen “but for” the defendant’s forum-related
 20 activities. *Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995). Here, that cannot be the
 21 case. Casiano was a return customer, having ostensibly been aware of Predator’s business

22 ² In 2021, the Supreme Court emphasized the disjunctive nature of the “arises out
 23 of or relates to” language, noting that the second half of the standard “contemplates that
 24 some relationships will support jurisdiction without a causal showing.” *Ford Motor Co. v.*
 25 *Montana Eighth Judicial District Court*, 141 S. Ct. 1017, 1026 (2021). The Ninth Circuit
 26 likewise has observed that a causal relationship between the contacts and the claims is not
 27 always required. *See Impossible Foods, Inc. v. Impossible X LLC*, No. 21-16977, 2023 WL
 28 5921361, at *10 (9th Cir. Sept. 12, 2023) (“But the nature of [the contacts] need not be
 causal. . . .”) (internal quotation omitted); *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972,
 983 n.5 (9th Cir. 2021) (“[O]ur precedents permit but do not require a showing of but-for
 causation to satisfy the nexus requirement.”). Here, however, both parties ask the Court to
 apply a “but for” causation standard, and Casiano avers only that his “claim *arises out of*
 [Predator’s] Arizona-related activity” (Doc. 13 at 9 (emphasis added)), thus limiting his
 argument to the first half of the disjunctive test, which is causal. The Court accordingly
 limits its analysis to the arguments made by the parties.

1 for upwards of five years before the events leading to his contract claims. (Doc. 13 at 15.)
2 Too, over one year had elapsed between Predator’s last email solicitation and Casiano’s
3 completion of the “Contact Us” form. (Doc. 13 at 42; Doc. 4-1.) Casiano has not met his
4 burden of demonstrating that he would not have inquired into a H1 Duramax Conversion
5 “but for” these activities.

6 Casiano further points to Predator’s limited troubleshooting after completion of the
7 engine conversion as a “but for” cause of his claims in this case. (Doc. 13 at 10.) More
8 specifically, Casiano identifies Predator’s refusal to engage in prolonged troubleshooting
9 efforts, asserting that “had [Predator] not . . . fail[ed] to ship the [Hummer] back to
10 California to fix its subpar work, [his] claims would not have arisen.” (Doc. 13 at 9-10.)
11 The Court disagrees. Predator’s resistance to continue assisting in troubleshooting efforts
12 *after* completion of the engine conversion, like Predator’s other forum-based activities, is
13 not a “but for” cause of the defective engine conversion at the heart of this dispute. Further,
14 when assessing specific personal jurisdiction, the Court examines a defendant’s forum-
15 related activities, not its inactivity. Predator’s inaction is not a contact with Arizona.

16 Finally, Casiano’s request for jurisdictional discovery is denied. Casiano seeks to
17 uncover whether Predator “actively solicits other Hummer owners in Arizona or frequently
18 conducts [sic] business in the State” The Court grants leave for discovery only “where
19 pertinent facts bearing on the question of jurisdiction are controverted or where a more
20 satisfactory showing of the facts is necessary.” *Boschetto*, 539 F.3d at 1020 (internal
21 quotation and citation omitted). Here, no additional factfinding is necessary. Casiano seeks
22 additional information relating to Predator’s sales in Arizona, but “neither [Casiano’s]
23 complaint nor his affidavit allege that [Predator is] engaged in such sales.” *Id.* Predator’s
24 other activities, as they relate to this case, do not amount to “more than a mere hunch” that
25 they will yield anything jurisdictionally relevant. *Smith v. Progressive Produce LLC*, No.
26 CV-21-01597-PHX-SMM, 2022 WL 1210647, at *4 (D. Ariz. Mar. 1, 2022).

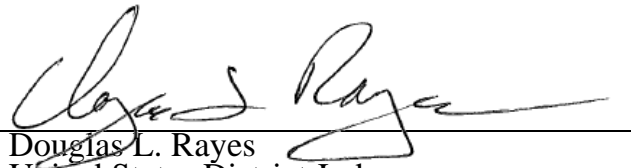
27 **IV. Conclusion**

28 In granting Predator’s motion to dismiss, the Court passes no judgment on the merits

1 of the underlying claims. However, fundamental due process principles require a different
2 court, one with personal jurisdiction over Predator, to reach those merits.

3 **IT IS ORDERED** that Casiano's request to engage in jurisdictional discovery (Doc.
4 13.) is **DENIED** and Predator's motion to dismiss (Doc. 4.) is **GRANTED**. This action is
5 dismissed without prejudice for lack of personal jurisdiction. The Clerk is directed to
6 terminate this case.

7 Dated this 19th day of September, 2023.

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12 Douglas L. Rayes
13 United States District Judge
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